

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

WILLIAM COUSER and SUMMIT
CARBON SOLUTIONS, LLC,

Plaintiffs-Appellees,

v.

STORY COUNTY, IOWA; STORY
COUNTY BOARD OF
SUPERVISORS; LATIFAH FAISAL,
in her official capacity as a Story
County Supervisor; LINDA MURKEN,
in her official capacity as a Story
County Supervisor; and LISA
HEDDENS, in her official capacity as a
Story County Supervisor,

Defendants-Appellants.

Case No. 23-3760

**APPELLANTS' UNRESISTED
MOTION TO CONSOLIDATE
APPEALS, ALIGN BRIEFING
SCHEDULES, AND EXTEND
THE DEADLINE FOR
APPELLANTS' BRIEF AND
APPENDIX**

Defendants-Appellants Story County, Iowa; Story County Board of Supervisors; Latifah Faisal, in her official capacity as a Story County Supervisor; Linda Murken, in her official capacity as a Story County Supervisor; and Lisa Heddens, in her official capacity as a Story County Supervisor (collectively, the “County”), pursuant to Federal Rule of Appellate Procedure 3(b)(2), hereby move the Court to consolidate this appeal with appeal no. 23-3758, to align the briefing schedules of the two appeals, and to extend the deadline for Appellants’ brief and appendix in both appeals to March 8, 2024, and in support, state as follows:

1. Plaintiff-Appellee Summit Carbon Solutions, LLC (“Summit”) proposes to build a carbon dioxide pipeline across the state of Iowa. The County adopted a zoning ordinance establishing setbacks and other requirements for hazardous liquid pipelines in the County.

2. In response, Plaintiffs-Appellees filed this lawsuit in the United States District Court for the Southern District of Iowa (Case No. 4:22-cv-383) seeking declaratory and injunctive relief that the County’s ordinance is preempted by Iowa Code chapter 479B and the federal Pipeline Safety Act, 49 U.S.C. § 60101 *et seq.*

3. On December 4, 2023, the district court, the Honorable Stephanie M. Rose, entered a final decision in this case, declaring that the County’s zoning ordinance is preempted by Iowa Code chapter 479B and the Pipeline Safety Act and permanently enjoining the County from enforcing its ordinance.

4. On that same date, Chief Judge Rose entered a final decision in a related case, *Summit Carbon Solutions, LLC v. Shelby County, Iowa, et al.* (Case No. 1:22-cv-20), likewise declaring that Shelby County’s hazardous liquid pipeline ordinance is preempted by Iowa Code chapter 479B and the Pipeline Safety Act and permanently enjoining Story County from enforcing its ordinance.

5. Both counties timely appealed the district court’s final decision. The Shelby County appeal is docketed as appeal no. 23-3758.

6. The County requests that the Court consolidate this appeal with appeal no. 23-3758. Consolidation is appropriate because the two appeals involve substantially similar issues of state and federal preemption, were decided by the same district court judge on the same date, and the parties are represented by the same counsel in both cases. Accordingly, consolidation will promote efficiency and consistent treatment. *See* 16A Wright & Miller, Federal Practice & Procedure § 3949.2 (5th ed.) (“A court of appeals may choose to consolidate appeals for the sake of efficiency and to promote consistent treatment.”); *Chapman v. Lab One*, 390 F.3d 620, (8th Cir. 2004) (consolidating appeals where the two cases presented closely related issues).

7. For the sake of administrative efficiency, the County also requests that the Court align the briefing schedules for both appeals. *See* 16A Wright & Miller, *supra*, at § 3949.2 (noting that consolidated appeals “generally follow a single briefing schedule.”).

8. The current deadline for the County’s initial brief and appendix in this appeal is February 7, 2024, and the current deadline for Shelby County’s initial brief and appendix in appeal no. 23-3758 is February 7, 2024.

9. Due to the undersigned’s counsel schedule and other commitments, the County requests that those deadlines be extended in both appeals to March 8, 2024.

10. Counsel for the County has conferred with counsel for Plaintiffs-Appellees, and they do not resist any of the relief sought in this motion.

WHEREFORE, the County requests that the Court:

- a. Consolidate this appeal with appeal no. 23-3758;
- b. Align the briefing schedules in the two appeals; and
- c. Extend the deadline for Appellants' brief and appendix in both appeals to March 8, 2024.

/s/ Jason M. Craig

Jason M. Craig (AT0001707)

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CERTIFICATE OF COMPLIANCE

1. This document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 592 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman.

3. The electronic version of this brief was generated by printing to pdf from the original word processing file. It has been scanned for viruses and it is virus-free in compliance with Local Rule 28A(h).

/s/ Jason M. Craig

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2024, I filed a copy of the foregoing with the Clerk of Court using the Appellate CM/ECF system which effected service on all participants in the case who are registered CM/ECF users.

/s/ Jason M. Craig